BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gorgee Enterprises, Inc., et al.,

Complainants,

VS.

Case 01-11-044 (Filed November 28, 2001)

America's Dream Limousine Service, Inc.

Defendant.

ADMINISTRATIVE LAW JUDGE'S TENTATIVE RULING PARTIALLY GRANTING AND PARTIALLY DENYING DEFENDANT'S EVIDENTIARY OBJECTIONS

This tentative ruling partially grants and partially denies Defendant America's Dream Limousine Service, Inc.'s July 9, 2002 written evidentiary objections to the rebuttal testimony of Scott Schaffer, the direct testimony of Debbie Waters, and certain direct and rebuttal exhibits of Complainants.¹ In the interest of resolving these 15 pages of objections before hearings commence on July 16, 2002, this ruling issues in advance of receiving any response from Complainants. Complainants can accept this ruling or present argument on the evidentiary objections.

Schaffer Testimony

Defendant objects to 16 sections of the Rebuttal Testimony of Scott Schaffer. Defendant generally objects to portions of that testimony, because

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 $^{^{\}rm 1}$ It appears Defendant served but did not file the evidentiary objections.

Defendant alleges they are hearsay, conclusionary and no foundation has been made that Schaffer has personal knowledge of the facts set forth therein under Evidence Code Section 702. Defendant also objects that many portions of the testimony are irrelevant and some either misstate Zeid's direct testimony, improperly call for a legal conclusion or constitute speculation and argument. Under Rule 64 of the Commission's Rules of Practice and Procedure, the Commission need not apply technical rules of evidence in its hearings. However, the Commission must preserve the substantial rights of the parties.

Defendant's motion to strike Schaffer's rebuttal testimony is denied. Because Defendant has the opportunity to cross-examine Schaffer at the hearings and to explore Schaffer's personal knowledge and credibility, permitting Schaffer to testify to the matters discussed in his rebuttal testimony does not prejudice Defendant. Through cross-examination, Defendant can establish how much weight the Commission should give to Schaffer's rebuttal testimony. Because Schaffer's testimony rebuts Zeid's direct testimony, it is not irrelevant. Where Schaffer draws legal conclusions, Defendant can voir dire Schaffer concerning his legal knowledge or test his legal knowledge through cross-examination.

Waters Testimony

Defendant's request to strike the Direct Testimony of Debbie Waters is granted. The May 1, 2002, scoping memo set June 21, 2002 as the date to serve direct testimony. Instead, Complainants served Waters' direct testimony on July 2, 2002, three days in advance of the date for serving rebuttal testimony.

Complainants gave no explanation for their failure to timely serve Waters' direct testimony. Schaffer's rebuttal testimony indicates that there was a substantial delay in receiving discovery from Defendant; however, the waybills Defendant made available on May 30, 2002, the subject of Waters' testimony, were received in advance of the due date for direct testimony. Defendant objects

to Waters' testimony, because Defendant does not have the opportunity to rebut it. There is insufficient time in advance of the hearings to permit Defendant the opportunity to serve rebuttal testimony. Receiving this testimony and permitting Defendant the opportunity to rebut it would require continuing the hearings. Neither party has requested such a continuance. Because receiving Waters' direct testimony would prejudice Defendant, Defendant's motion to strike it is granted.

Exhibits

Defendant moves to strike two exhibits (Complainants' rebuttal testimony, Exhibit C, and Complainants' direct testimony, Exhibit 2) containing portions of transcripts from a related proceeding, Case 01-01-008, Gorgee Enterprises et al. v. Aram Davtyan et al. Defendant objects that the transcripts have not been authenticated, are incomplete and were not produced to Defendant, as requested. Defendant further objects that Exhibit 2 fails to identify the witness who was testifying. Although the Commission can take official notice of transcripts in other Commission proceedings, in this instance noticing portions of transcripts that Defendant has been unable to review would prejudice Defendant. If Complainants fail to make available to Defendant these transcripts in advance of the hearings, the Commission will not take official notice of them.

Defendant moves to strike Exhibit E to Complainants' rebuttal testimony on the grounds that it has not been properly authenticated and contains inadmissible hearsay. Exhibit E is a business record and includes a sworn certification from Lancer Insurance Company's (Lancer) Associate General Counsel that the attached material includes all nonprivileged documents contained in their file. Complainants offer Exhibit E to rebut Zeid's testimony concerning Lancer's cancellation of Defendant's insurance policy. Exhibit E is admissible for that purpose and Defendant's motion to strike it is denied.

C.01-11-044 JLG/avs

IT IS TENTATIVELY RULED that Defendant's evidentiary objections to the rebuttal testimony of Scott Schaffer, the direct testimony of Debbie Waters, and certain direct and rebuttal exhibits of Complainants are partially granted and partially denied as set forth herein.

Dated July 12, 2002, at San Francisco, California.

/s/ Janice Grau Janice Grau Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Tentative Ruling Partially Granting and Partially Denying Defendant's Evidentiary Objections on all parties of record in this proceeding or their attorneys of record.

Dated July 12, 2002, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

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